IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

WP(C).No. 7196 of 2005(F)

OS.15/2000 of SUB COURT, KASARAGOD
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PETITIONER:

UMESH RAO, AGED 64 YEARS,
S/O.NARAYANA RAO, RETIRED SUB REGISTRAR,
BEACH ROAD, KASARAGOD.

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENTS:
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1. NAFEESA, AGED 50 YEARS.

2. MUNEERA, AGED 23 YEARS.

3. NASEEMA, AGED 21 YEARS,
(ALL ARE MUSLIMS, LANDHOLDERS, WIDOW AND
CHILDREN OF K.M.ABDUL RAHIMAN,
R/AT DEENAR MANZIL, NEAR MALIK DEENAR HOSPITAL
THALANGARA VILLAGE AND POST, KASARAGOD).

BY ADV. SRI.T.K.VIPINDAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE AGREEMENT DT.29.02.92 IN FAVOUR OF THE PETITIOINER.

EXT.P2 : TRUE COPY OF THE ORDER DT.22.02.05 PASSED BY THE SUBORDINATE JUDGE, KASARAGOD.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 7196 OF 2005

Dated this the 3rd day of July, 2007

JUDGMENT

The plaintiff who is aggrieved by the construction of Ext.P1 document by the court below as a bond and not as an agreement has filed this Writ Petition under Article 227 impugning Ext.P2 order of the court by which the petitioner has been directed to pay deficit stamp duty and penalty within three days.

2. Very strenuous arguments were addressed before me by Mr.Kodoth Sreedharan, learned counsel for the petitioner who invited my attention to a number of judgments of this court including those in **Mathai Mathew v. Thampi** [1989 (1) KLT 138] and judgments in **Little Flower Kuries & Eneter0prises Ltd., v. Victory** [1979 KLT 820]. The learned counsel placed strong reliance on the judgment of the Supreme Court in **Empress Mills v. Municipal Committee, Wardha** [AIR 1958 SC 341] and concluded by submitting that since it is possible to construe Ext.p1 document as an agreement also. The learned Munsiff should have construed the same as an agreement since such a construction imposed a lesser burden on the plaintiff. The learned counsel placed before me a copy of the plaint for my perusal.

3. The submissions of Sri.Kodoth Sreedharan were very stiffly

resisted by Advocate Sri.Vipin Das who would cited the judgments of this court in **Radha v. Sankaranarayanan** [2007 (1) KLT 20]] **Gopakumar v. P.Easwar Pillai** [2006 ILR (1) Kerala 740] and also that in **Thomas & another v. Sasidharan & others** [2004 (2) KLJ 153].

4. I shall at the very outset state that Ext.P2 order passed by the learned Subordinate Judge is a well reasoned order in the sense that the learned judge has given fairly sound reasons for supporting his decision. The learned Judge has referred to the judgments in Mathai Mathew's case and also **M.R.Sreedharan v. G. Gopi (2003(1) KLJ 668]** and has noticed that the distinguishing feature between bonds and agreements is that bonds create a fresh obligation to pay while agreements record and reiterate an existing obligation. The learned judge noticed that Ext.P1 agreement is dt.29.02.92 and it is recorded therein that the agreement itself shall be the receipt for the sum of Rs.1,50,000/- which had been paid by cash on the same day by the plaintiff to the defendant for his business. Therefore the learned Judge found that it is under Ext.P1 itself that the liability is created and it is not correct to say that the liability had already been created, when the parties executed Ext.P1.

5. Ext.P1 is styled as an agreement and stamped as an agreement by its author who is none other than the defendant

respondent. Ext.P1 is capable of being interpreted as a document necessitated for the purpose of creating a receipt for a loan transaction of Rs.1,50,000/- which the parties had between them earlier on the same day. Such an interpretation cannot be ruled out when one goes through paragraph 3 of the plaint wherein it is averred that after borrowing a loan of Rs.1,50,000/- the defendants had executed the agreement incorporation their undertaking to make repayments. Looking at Ext.P1 that way, Ext.P1 is capable of being interpreted as an agreement also. Since such an interpretation imposes lesser burden on the plaintiff, I apply the principles laid down by the Supreme Court in **Empress Mills'** case(supra) and the judgment by this Court in **Mathai Mathew**'s case(supra) and hold that the learned Subordinate Judge should have allowed marking of Ext.P1 as an agreement.

The result is that the Writ Petition will stand allowed. Ext.P2 will stand set aside. It is also held that the stamp duty already paid on Ext.P1 is sufficient. The learned Subordinate Judge is directed to permit marking of Ext.P1 in evidence and dispose of the suit in accordance with law.

PIUS C. KURIAKOSE, JUDGE

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